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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,039	07/09/2003	Roger Nolan	103681-112799	9796
7590	10/31/2005		EXAMINER	
Mark A. Taylor Stoll, Keenon & Park, LLP Suite 2100 300 W. Vine St. Lexington, KY 40507			WILKENS, JANET MARIE	
			ART UNIT	PAPER NUMBER
			3637	
DATE MAILED: 10/31/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/616,039	NOLAN, ROGER	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 August 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 9, 11, 12 and 20-22 is/are allowed.  
 6) Claim(s) 1-8, 10 and 13-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input checked="" type="checkbox"/> Other: <u>Attachments A and B</u> .  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Scaramuzzi. Scaramuzzi teaches a cargo support device (Figs. 2 and 3) comprising a platform (horizontal surface member of 20 with sides 22,23) having a cargo support surface (23) and base members (11) projecting from the platform. Each of the base members having a curved recess defined therein and extending inwardly from a generally vertical side portion (see Attachment A); the recess being comprised of a positioning surface (15) with a sloping wall, a receiving surface (13) with a concave wall portion having a substantially constant radius and a lifting surface (14).

Claims 1, 2 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Averill (2,733,884). Averill teaches a cargo support device (Fig. 2) comprising a platform (members 1-4) having a cargo support surface (tops of members 2) and base members (Fig. 4) projecting from the platform. Each of the base members having a curved recess defined therein and extending inwardly from a generally vertical side portion (see Attachment B); the recess being comprised of a positioning surface with a sloping wall, a receiving surface and a horizontal lifting surface.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scaramuzzi. As stated above, Scaramuzzi teaches the limitations of claim 1, including a support device with a platform and bases. For claim 8, Scaramuzzi fails to teach that the device is made of a polymer. Note: product by process limitations are given no weight in the claims. The examiner takes Official notice that plastic/polymer pallets/support devices are well known in the art. Therefore, it would have been an obvious design consideration to one of ordinary skill in the art to make the device of Scaramuzzi out of any of a number of different materials including plastic/ polymer, depending on the desired need of the person constructing the support device, i.e. depending on the material readily available, strength properties required/desired, personnel preferences, economic reasons, etc.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Averill. As stated above, Averill teaches the limitations of claim 1, including a support device with a platform and bases. For claim 8, Averill fails to teach that the device is made of a polymer. Note: product by process limitations are given no weight in the claims. The examiner takes Official notice that plastic/polymer pallets/support devices are well known in the art. Therefore, it would have been an obvious design consideration to

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one of ordinary skill in the art to make the device of Averill out of any of a number of different materials including plastic/ polymer, depending on the desired need of the person constructing the support device, i.e. depending on the material readily available, strength properties required/desired, personnel preferences, economic reasons, etc.

Claims 13-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaramuzzi in view of Phillips. Scaramuzzi teaches a cargo support device (Figs. 2 and 3) comprising a platform (horizontal surface member of 20 with sides 22,23) having a cargo support surface (23) and base members (11) projecting from the platform. Each of the base members having a curved recess defined therein and extending inwardly from a generally vertical side portion (see Attachment A); the recess being comprised of a positioning surface (15) with a sloping wall, a receiving surface (13) with a concave wall portion having a substantially constant radius and a lifting surface (14). For claim 13, Scaramuzzi fails to teach upstanding walls on the support device. Phillips teaches the use of upstanding walls (30,31,40-44) on a support device. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Scaramuzzi by adding four upstanding walls thereon (which are in alignment with the outer base members), such as is taught by Phillips, to provide a rim on the device which would prevent articles on the device from sliding off, to provide a container structure on the device for the storage of articles, etc.

For claim 19, Scaramuzzi in view of Phillips fails to teach that the device is made of a polymer. Note: product by process limitations are given no weight in the claims. The examiner takes Official notice that plastic/polymer pallets/support devices are well

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known in the art. Therefore, it would have been an obvious design consideration to one of ordinary skill in the art to make the device of Scaramuzzi in view of Phillips out of any of a number of different materials including plastic/ polymer, depending on the desired need of the person constructing the support device, i.e. depending on the material readily available, strength properties required/desired, personnel preferences, economic reasons, etc.

Claims 13, 14 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Averill (2,733,884) in view of Phillips. Averill teaches a cargo support device (Fig. 2) comprising a platform (members 1-4) having a cargo support surface (tops of members 2) and base members (Fig. 4) projecting from the platform. Each of the base members having a curved recess defined therein and extending inwardly from a generally vertical side portion (see Attachment B); the recess being comprised of a positioning surface with a sloping wall, a receiving surface and a horizontal lifting surface. For claim 13, Averill fails to teach upstanding walls on the support device. Phillips teaches the use of upstanding walls (30,31,40-44) on a support device. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Averill by adding four upstanding walls thereon (which are in alignment with the outer base members), such as is taught by Phillips, to provide a rim on the device which would prevent articles on the device from sliding off, to provide a container structure on the device for the storage of articles, etc.

For claim 19, Averill in view of Phillips fails to teach that the device is made of a polymer. Note: product by process limitations are given no weight in the claims. The

examiner takes Official notice that plastic/polymer pallets/support devices are well known in the art. Therefore, it would have been an obvious design consideration to one of ordinary skill in the art to make the device of Averill in view of Phillips out of any of a number of different materials including plastic/polymer, depending on the desired need of the person constructing the support device, i.e. depending on the material readily available, strength properties required/desired, personnel preferences, economic reasons, etc.

#### ***Allowable Subject Matter***

Claims 9, 11, 12 and 20-22 are allowed. (The allowable subject matter being the cargo support device having a platform and base members; each base member having a curved recess therein with a sloping wall portion, a concave receiving surface wall portion and a substantially horizontal wall portion lifting surface.)

#### ***Response to Arguments***

Applicant's arguments filed August 16, 2005 have been fully considered but they are not persuasive.

Addressing the arguments concerning the reference of Scaramuzzi: as discussed above in the art rejections, the examiner contends that Scaramuzzi does teach all of the claimed limitations, including a recess defined by walls extending inwardly into the base member from a generally vertically oriented side portion thereof (see Attachment A). As for the lifting surface, the limitation defining this surface as generally horizontal

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first appears in claims 5 and 17. Claims 5 and 17 are not rejected over Scaramuzzi.

Furthermore, since a lifting device comes into contact with surface 14 while the pallet is lifted, this surface can be considered a "lifting surface".

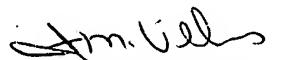
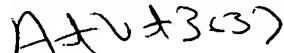
Finally, since the Official notice has not been challenged, it is assumed that the examiner's statement is agreed with and therefore, no arguments concerning this subject can be brought up in a subsequent response.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens  
October 26, 2005

  
JANET M. WILKENS  
PRIMARY EXAMINER  


Attachment A

Oct. 4, 1966

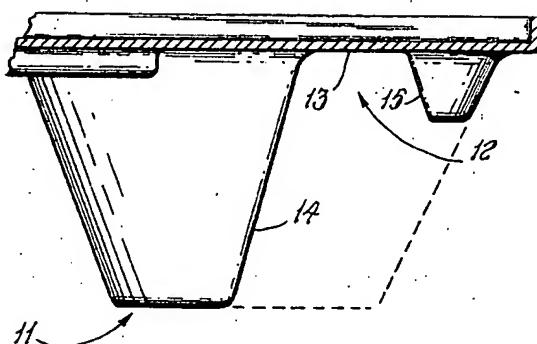
A. J. SCARAMUZZI

3,276,808

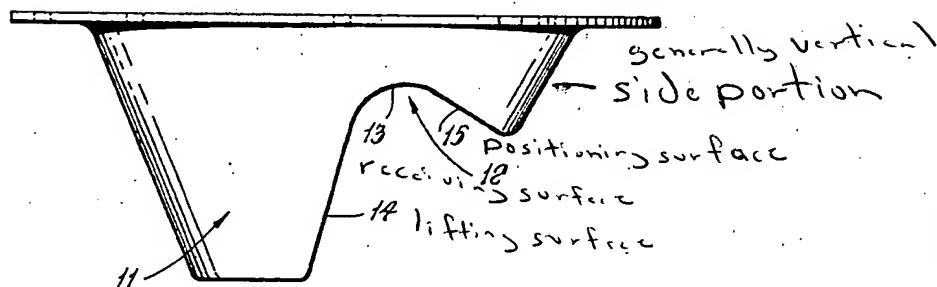
SUPPORTS FOR A NESTABLE PALLET

Filed Aug. 18, 1964

2 Sheets-Sheet 1



*Fig. 1*



*Fig. 2*

INVENTOR.  
ANTHONY J. SCARAMUZZI

BY  
*Lorino B. Coglianese*  
*Edward F. Coglianese*  
ATTORNEYS

Attachment B

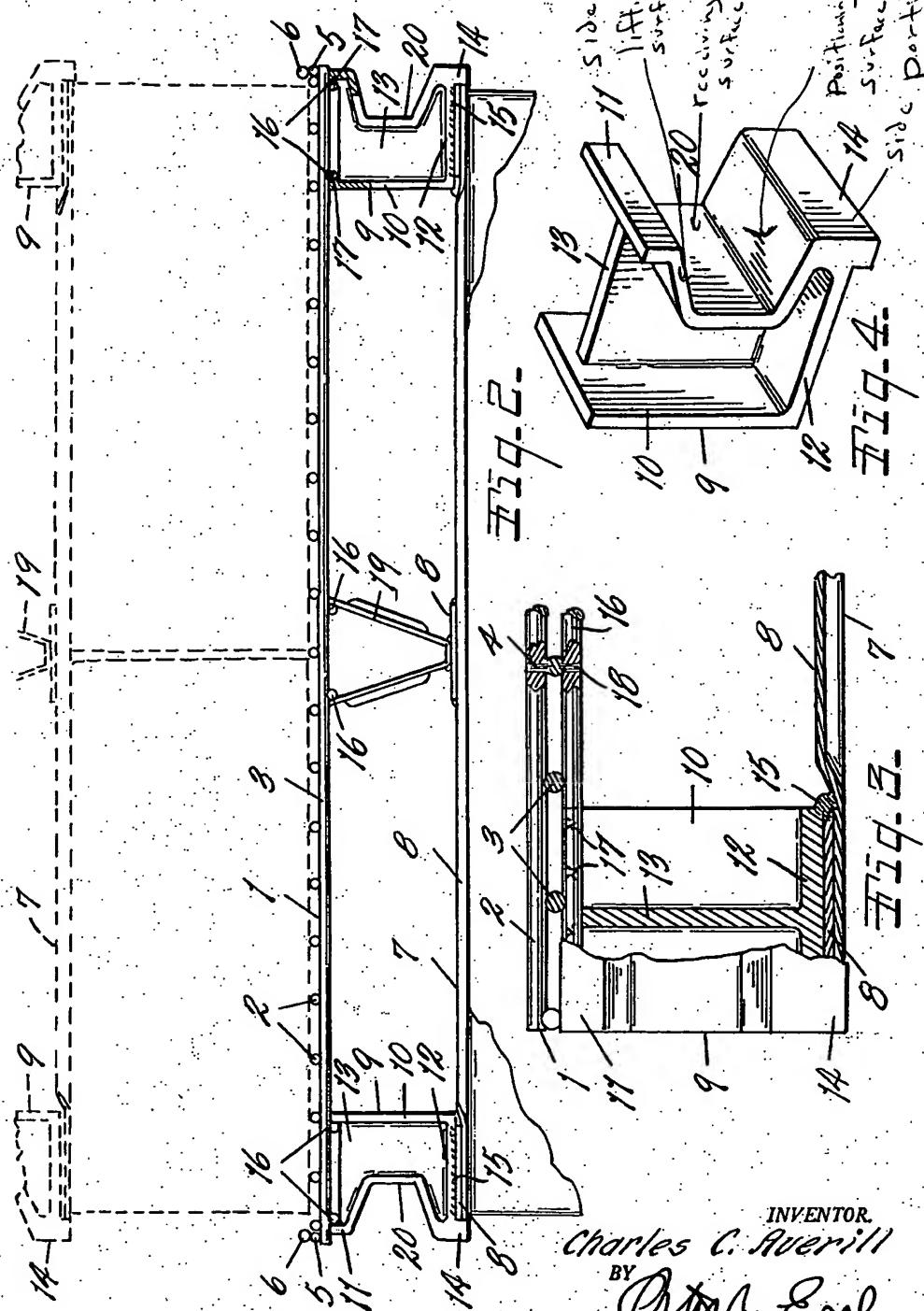
Feb. 7, 1956

C. C. AVERILL

2,733,884

MATERIAL HANDLING PALLETS OR SKIDS

Filed March 15, 1951



INVENTOR  
Charles C. Averill

BY  
Oscar L. Earl  
Attorney.